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**IN THE
COURT OF APPEALS OF INDIANA**

STEPHEN WETTSCHURACK,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 04A03-0611-CR-537

APPEAL FROM THE BENTON CIRCUIT COURT
The Honorable Rex W. Kepner, Judge
Cause No. 04C01-0505-FD-133

May 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Stephen Wettschurack appeals his conviction for Receiving Stolen Property, a Class D felony, contending that the evidence is insufficient to support the conviction. Finding that the State presented sufficient evidence to support Wettschurack's conviction, we affirm the judgment of the trial court.

Facts and Procedural History

In 1992, Wettschurack was the Chief of the Otterbein Volunteer Fire Department ("OVFD") in Benton County when the Tippecanoe County Commissioners appointed him Director of the Tippecanoe County Emergency Management Agency ("TEMA"). Wettschurack retained his position as Chief of the OVFD while he was serving as Director of TEMA. In October 2004, Wettschurack learned that he was being replaced as Director of TEMA. Wettschurack's successor, Mark Kirby, assumed his duties on January 1, 2005.

Within his first couple of weeks as Director, Kirby learned that TEMA property was missing. Kirby contacted Wettschurack, who helped him locate some of the missing property. Wettschurack, however, was not entirely cooperative. As a result, Kirby contacted the Tippecanoe County Commissioners, and the Tippecanoe County attorney sent Wettschurack a letter dated February 9, 2005, which provides in pertinent part:

Our audit of the inventory and equipment records of Tippecanoe County Emergency Management, the Department and physical inventory of property and equipment has disclosed a number of items which are the property of Tippecanoe County which are currently unaccounted for. Those items include, without limitation, computers, cameras, office supplies, and other equipment which were in your care while you held the position of Emergency Management Director for Tippecanoe County.

You are hereby directed to turn over directly to . . . Kirby . . . on or before February 18, 2005, all property in your possession or under your direct or indirect control that [is] the property of Tippecanoe County. The items to be delivered shall include anything acquired through grants, programs, donations, or outright purchases that could in anyway be construed as having come to you and/or Tippecanoe County Emergency Management as a result of your position as [T]EMA Director. In addition, if you are aware of any such property that is or may be in the possession of another person or entity, you are directed to reveal the nature and location of such property to Mr. Kirby in writing by the same date.

State's Ex. 1. As a result of the letter, Wettschurack returned more, but still not all, of the missing property.

In early April 2005, Kirby and a lieutenant from the Tippecanoe County Sheriff's Department visited Wettschurack at his home in an attempt to recover the rest of the TEMA property "without making it official." Tr. p. 79. They offered Wettschurack "amnesty"—with "no questions asked"—but Wettschurack "vehemently stated that he didn't have a darn thing" belonging to Tippecanoe County/TEMA. *Id.* at 79, 198. Later that month, Kirby received a telephone call from the Assistant Chief of the OVFD, who stated that there were items at the OVFD that possibly belonged to Tippecanoe County/TEMA. Kirby and the Assistant Director of TEMA then visited the fire station and identified a generator that had been missing. Kirby immediately contacted the Tippecanoe County Sheriff's Department, and a search warrant was issued.

Numerous items belonging to Tippecanoe County/TEMA were identified and seized during the search of the OVFD. The parties stipulated that the following items found at the fire station belonged to Tippecanoe County/TEMA:

- Box of electrical supplies
- Red Honda generator
- Earthmate GPS system

Motorola battery re-conditioner
Orange traffic wand
Keys marked "TCOB" (Tippecanoe County Office Building)
Life preservers
Three blue thermal face masks
Two yellow 75-foot ropes with Pro Rescue Bags
One Gerber River Shorty Knife
Three badges bearing Tippecanoe County Emergency Director
Blue and clear kit containing assorted items to be used in operating the
HAZMAT IR mass Spectrometer

Tr. p. 107; Appellant's App. p. 10. These items were found throughout the fire station. For example, the GPS system and battery re-conditioner were found in a locked cabinet. The life preservers were found in a garbage bag, which was inside a coffin box on top of a rescue truck. Both preservers had the word "TEMA" marked out and a number written above it. One of the preservers was numbered "1320," which is the number of the OVFD Chief, and the other preserver was numbered "1303," the designation for an OVFD truck.

The parties also stipulated that Tippecanoe County adopted a policy on January 19, 1999, governing the return of county property upon termination of employment. That stipulation provides:

Employees are responsible for all property, materials, or written information issued to them or in their possession or control. All property must be returned by employees on or before their last day of work. Where permitted by law, the county may withhold from an employee's paycheck the cost of any items that are not returned as required. The county may also take all action deemed appropriate to recover or protect its property. The Tippecanoe County Human Resources Department distributed a copy of this policy to all Tippecanoe County employees on or about February 1, 1999. On or about February 1, 1999, Steve Wettschurack was an employee of Tippecanoe County and a copy of this policy was sent to him. The policy has not changed since its adoption.

Tr. p. 74.

The State initially charged Wettschurack in May 2005 with theft and receiving stolen property, but the State subsequently amended the information to charge him with only one count: Receiving Stolen Property as a Class D felony.¹ Following a jury trial, Wettschurack was convicted as charged. The trial court sentenced him to one year, all of which was suspended to probation. Wettschurack now appeals his conviction.

Discussion and Decision

Wettschurack raises one issue on appeal. Specifically, he contends that the evidence is insufficient to support his conviction for receiving stolen property. Upon a challenge to the sufficiency of evidence, a reviewing court does not reweigh the evidence or judge the credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We must consider only the probative evidence and reasonable inferences supporting the verdict. *Id.* We must affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Id.* To sustain a conviction for receiving stolen property as charged in this case, the State was required to prove that Wettschurack knowingly retained property of Tippecanoe County/TEMA that had been the subject of theft. Ind. Code § 35-43-4-2(b). “Knowledge that the property is stolen may be established by circumstantial evidence The test of knowledge is a subjective one, asking whether the defendant knew from the circumstances surrounding the possession that the property had been the subject of a theft.” *Barnett v. State*, 834 N.E.2d 169, 172 (Ind. Ct. App. 2005). Theft, in turn, occurs when a person “knowingly or intentionally

¹ Ind. Code § 35-43-4-2(b).

exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use.” I.C. § 35-43-4-2(a). A defendant can be convicted of receiving stolen property even if he is the actual thief. *See Gibson v. State*, 643 N.E.2d 885, 892 (Ind. 1994).

Wettschurack’s only argument on appeal is that the evidence is insufficient to support his conviction for receiving stolen property because “the property retrieved from the fire station was never the subject of theft, in that Wettschurack procured the property legally.” Appellant’s Br. p. 7. Wettschurack, however, misses the point. Even though Wettschurack may have procured the property legally in his role as Director of TEMA, he exerted unauthorized control over the property after his employment with Tippecanoe County ended, thereby making it the “subject of theft.”

The record shows that Wettschurack was replaced as Director of TEMA effective January 1, 2005. According to applicable Tippecanoe County policy, “All property must be returned by employees on or before their last day of work.” Tr. p. 74. Shortly after taking over as Director of TEMA, Kirby learned that some of the agency’s property was missing. Wettschurack returned some of the missing property, but he was not very cooperative in doing so. Thereafter, the Tippecanoe County attorney sent Wettschurack a letter requesting the return of the remaining missing property. After the letter, Wettschurack returned more of the missing property but still not all of it. As such, Kirby and a lieutenant from the Tippecanoe County Sheriff’s Department visited Wettschurack at his home offering him amnesty if he returned the rest of the missing property, but Wettschurack denied having any TEMA property. The rest of the missing property was

eventually recovered from the OVFD, where Wettschurack was still serving as Chief. Some of the property had TEMA marked out and was replaced with “1320,” the designation for Chief of the OVFD.

The evidence in this case shows that Wettschurack was exerting unauthorized control over TEMA property with intent to deprive TEMA of its value or use. As such, contrary to Wettschurack’s sole argument on appeal, the TEMA property was the “subject of theft.” Because the evidence shows that Wettschurack knowingly retained property of Tippecanoe County/TEMA that had been the subject of theft, we affirm his conviction for receiving stolen property.

Affirmed.

SULLIVAN, J., and MAY, J., concur.